IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5257 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

BARODA MUNICIPAL CORPORATION

Versus

NARENDRA MANILAL SHAH

Appearance:

MR PRANAV G DESAI for Petitioner

(MR PB MAJMUDAR) for Respondent No. 1

Mr NK Majmudar for Respondent No.1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/03/2000

CAV JUDGEMENT

Laws though in themselves never so wise and pious are but a dead letter and of little force except there be a due and impartial execution of them.

The weaker sections of Indian Humanity have been deprived of justice for long years, they have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position, they lack the capacity to assert their rights and they donot have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice.

The concern shown by the law to the poor and disadvantaged is much greater than that shown to the rich and the well to do because the latter can on account of their dominant social and economic position and large material resources,resist aggression on their rights whereas the poor and the deprived just do not have capacity or the will to resist and fight.

Every citizen of this country has a right to receive speedy, inexpensive and unpolluted justice. He is waiting with expectations. Let us respond positively.

Precedents which enunciate rules of law form the foundation of administration of justice under our system. Consistency in interpretation of law alone can lead to public confidence in our judicial system. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties.

Learned advocate Mr. Desai is appearing for the petitioner. Learned advocate Mr. NK Majmaudr is for the respondent workman (as per Court's order dated 23.9.1999). The facts of the present case, in brief, are as under:

1. The respondent workman was working as Mechanical Overseer in the water works department of the petitioner corporation from 1.2.1967 and in the year 1970, on 24th June, 1970, a chargesheet had been issued to him and alongwith chargesheet, statement of charges was also furnished to him. Following four allegations were levelled against the respondent.

(1) Performing duties in negligent manner which caused loss to the department.
(2) Disobedience of the orders of the superior officers.
(3) After availing the casual leave, submitting of privilege leave report without mentioning the

address and without getting sanctioned the leave which resulted into difficulties to the department.

(4) Unauthorized act of misconduct wherein it was alleged against the respondent that he was not putting his signature in rojmel and other records which were in his possession since August, 1969 inspite of the instructions from the officers and, thereby, he was careless and negligent in performance of his duties and as a result of this, he has not obeyed the orders of the superior officers.

Further allegation was to the effect that he had unauthorizedly used the proclin tube resisters wires of Sevasi Gotri 60 HP Pumping Set Roter Starter to some other work by puling it without any permission and that he had adjusted old parts by replacing catch up strips of the starter and that he has dismantled push buttons of 60 HP Starter.This act has been done without informing the superior officer and without getting permission from him.

On the basis of the said allegations, the petitioner corporation had initiated detailed departmental inquiry against the respondent workman and one Mr. CJ Shah was appointed as Inquiry Officer to conduct the inquiry against the respondent who showed his unwillingness to act as such and thereafter, one Mr. RH Makati, Assistant Hydrolic Engineer was appointed as inquiry officer. The inquiry officer has submitted his report on 2.7.1971 and has concluded that the allegations which were levelled against the respondent have been found to be proved. Thereafter, the respondent was served with the second show cause notice dated 24.7.1971 to which the respondent workman had submitted his explanation on 9th August, 1971 and, thereafter, the corporation has passed order dated 23rd September, 1971 terminating the services of the respondent workman with effect from 31.10.1971.

Thereafter, the respondent workman had filed the civil suit no. 1995 of 1971 in the civil court at Baroda wherein, on 29th August, 1977, the learned Joint Civil Judge,S.D., Baroda delivered judgment by holding that the civil court has no jurisdiction to try the suit of the plaintiff and the respondent workman has to take remedy under the Industrial Disputes Act, 1947 ("ID Act" for short). Accordingly, the suit was dismissed on that ground alone.

Thereafter, the respondent workman had raised the

industrial dispute against the petitioner corporation and has challenged the impugned order of dismissal which was ultimately referred for adjudication to the labour court, Baroda on 21st November, 1977. Said reference has been made by the State Government under section 10(1) of the ID Act. Before the labour Court, the respondent had filed his statement of claim to which, the petitioner corporation had filed written statement at Exh.9. In the statement of claim, the respondent workman has challenged the legality, validity and propriety of the departmental inquiry. Before the labour court, the respondent workman was examined on oath at Exh. 44 and the petitioner has not led any oral evidence with respect to the legality and validity of the departmental inquiry and such purshis was given at Exh. 46.

The labour court, Baroda has decided the preliminary point in respect of legality and validity of the departmental inquiry on 16th April, 1980 at Exh. 48 and came to the conclusion that the departmental inquiry which was initiated against the petitioner was not legal and valid and the same was vitiated.

Said order of the labour court, Baroda was challenged by the petitioner before this court by filing special civil application no. 2495 of 1980. Said petition came to be decided by the division bench of this court on 26th November, 1980. The division bench of this court has made the following observations in its order dated 26th November, 1980:

"We have perused the charges which were preferred against the respondent No. 1 by the Corporation. They all charges of negligence and dereliction of duty. They do not raise any complicated question of fact or law. The respondent No.1 has no statutory or other right to be represented by a lawyer at the departmental inquiry since the charges preferred against him were not complicated necessitating the help of a lawyer, it is difficult for us to say that the departmental enquiry was vitiated on account of the fact that the respondent no. 1 was not allowed to be defended by a lawyer at the departmental inquiry. Principles of natural justice didnot required to be done. We, therefore, set aside the finding recorded by the labour court on this aspect.

So far as the second finding recorded by the labour court is concerned, there is some substance in it. Respondent No. 1 does not appear to be acquainted with law, legal forms and legal procedure. In order, therefore, that he could effectively defend himself against the charges preferred against him, it was necessary for the enquiry officer to call him, it was necessary for the inquiry officer to call upon respondent No.1 to produce defence witnesses and examine them if he so desired. Inasmuch as the inquiry officer didnot do it, the inquiry held against respondent no.1 was vitiated. The finding recorded by the Labour Court in that behalf is justified, we uphold it.

Now, before the labour court, the corporation will have to justify the order of dismissal on merits. SO far as the evidence led by the corporation before the enquiry officer is concerned, it cannot be wiped off from the record because we find nothing wrong with the recording of that evidence. We, therefore, direct that when the labour court makes an enquiry into this matter , the labour court shall retain that evidence on record and shall look into it as if it was led before it. However, it shall be open to respondent No. 1 to lead such evidence as he thinks fit in order to show that he was not guilty of any or all of the charges preferred against him. We would also like to make it clear that it shall be open to the labour court to call upon the corporation to produce evidence before the labour court if the labour court thinks that such evidence is necessary in addition to the evidence which is on record. In view of the fact that we are confirming the finding recorded by the labour court on the second aspect, this petition cannot succeed. Therefore, subject to the observations which we have made, the petition fails and is dismissed. Rule discharged with no order as to costs. Since this is an old dispute between the parties, we direct the labour court to decide this case as expeditiously as it can preferably within a period of two months. "

The clear conclusion of the Division Bench of this Court is that in respect of second finding recorded

by the labour court, the division bench of this court has found substance and on that count, the said finding that the inquiry held against the workman has been vitiated has been confirmed by the division bench of this court. However, the division bench of this court has granted permission to the petitioner corporation to justify the order of dismissal on merits and has also directed that when the labour court makes inquiry into the matter, the labour court shall look into it as it was led before it. However, it was kept open for the respondent to lead such other evidence as he thinks fit in order to show that he was not guilty of any or all of the charges levelled against him. It was also kept open that it shall be open to the labour court to call upon the corporation to produce the evidence before the labour court if the labour court thinks that such evidence is necessary in addition to the evidence which is on record before it. Ultimately, while confirming the finding of the labour court as regards second aspect, said petition filed by the petitioner corporation was dismissed by this court by directing the labour court to decide the case as expeditiously as it can preferably within two months.

After the decision rendered by the division bench of this court, though the labour court has given permission to the petitioner corporation and called upon the petitioner to produce any other evidence in the matter and the respondent workman have no objection for production of such evidence, the petitioner corporation has,by Exh. 76, declared that the Gujarat High court has not passed an order to delete any evidence which is lying in the departmental inquiry and in such circumstances, it has been declared that the first party does not want to produce any further oral evidence and in that view of the matter , the labour court, after considering the said submissions, passed detailed order vide Exh. 56 and 73 and it has been held that the petitioner corporation can produce evidence and, thereafter, the respondent was examined at Exh. 92 and he has also submitted his affidavit at Exh. 88. Thereafter, the petitioner corporation has submitted purshis Exh. 97 and declared that it does not want to lead the evidence and, thereafter, the labour court has examined the merits of the matter on the basis of the record of the departmental inquiry and two oral testimonies of the respondent witness.

After considering the entire evidence on record, from para 10 to 21 of its judgment, the labour court has discussed in detail the facts and evidence and has come to the conclusion that looking to the over all

circumstances, out of four allegations leveled against the respondent workman, not a single charge can be said to have been proved and no negligence or carelessness on the part of the respondent workman has been proved and looking to the findings of the inquiry officer,it is found that he had not drawn the attention to the necessary and important facts by accepting the facts of Shri Makati and by closing the eyes, only in two and half page report by accepting that four allegations which have been levelled against the second party have been proved. By doing so, he has committed serious error. In para 19 of its award, the labour court has, therefore, observed that the order of dismissal is, therefore, illegal, unreasonable, unjust and cannot lie and, therefore, by cancelling the said order, it is necessary to pass an order of reinstatement of the respondent work with continuity of service which is justiciable. Ultimately, therefore, the labour court has quashed and set aside the impugned order of dismissal and has directed the petitioner corporation to reinstate the respondent workman in service with continuity of service and full back wages for the intervening period from 1.11.1971 till the date of his reinstatement. The petitioner was also directed to pay to the respondent an amount of Rs. 500/towards costs.

Said award has been challenged by the petitioner corportion before this court by filing this petition. In this petition, following order was passed by this court on 30.3.88:

"Mr. Majmudar states that the workman has been out of job since 1971 and the petitioner corporation has failed to reinstate him despite the order of the labour court, Vadodara dated 18th September, 1986. We, therefore, direct that the Municipal Corporation shall reinstate the respondent within fifteen days from today and deposit 50 per cent of the back wages in this court within even time.SO to 18th September, 1988 for further directions."

Thereafter,on 24.9.1989, this petition was admitted by this Court and notice as to interim relief was issued and was made returnable on 25th July,1989. On 25th July,1989, interim relief as regards back wages was granted on condition that out of the amount already deposited in the court, an amount of Rs. 50,000/- is invested in long term fixed deposit in any nationalized

bank so as to continue till the disposal of this petition. The balance amount of Rs. 50000/- was directed to the respondent without insisting for any security.

This petition came up for hearing on 25th November, 1999. On that day, notice was directed to be issued to the respondent since Mr. PB Majmudar, learned advocate appearing for the respondent has been elevated to the bench of this Court which was made returnable within two weeks.

Today,when this matter was taken up for final hearing, learned advocate Mr. Pranav G.Desai appearing for the petitioner has submitted that there are serious allegations levelled against the respondent workman and according to the records, all the four allegations were found to be proved and there are serious charges and yet the labour court has granted reinstatement which finding of the labour court is baseless and perverse. The labour court has no jurisdiction to reappreciate the evidence led in the departmental inquiry and to come to the different conclusion and/or to replace the same by its own conclusion and therefore, according to him, the labour court has committed gross error which is apparent on the fact of the record. Mr. Desai has submitted that there was admission in respect of the allegations levelled against the respondent workman which has been ignored by the labour court while passing the impugned award. He has further submitted that the petitioner has justified the dismissal and in such circumstances, it was the duty of the labour court to inflict some punishment to the respondent workman if it was of the view that the punishment of dismissal was harsh and/or disproportionate looking to the gravity of the misconduct. Mr. Desai has not submitted anything against the granting of back wages and has rightly done so in view of the fact that initially the respondent workman had approached the civil court and since his suit was dismissed by the civil court on the ground of jurisdiction, thereafter, he has raised the industrial dispute after a period of about seven years from the date of the cause of action and the labour court has considered the decision of the apex court reported in AIR 1984 SC 1829 in case of MM Saiyad versus Baroda Municipal corporation. Mr. Desai has not been able to point out anything that any evidence was produced before the labour court to establish that the respondent was gainfully employed after the dismissal and during the intervening period. Therefore,he has rightly submitted that in view of the apex court's decision in case of MM Saiyad (supra), the back wages have not been challenged

and no submissions have been made by him on the aspect of back wages.

Learned advocate Mr. Desi has further pointed out that the Inquiry Officer Mr. Makati has subsequently been dismissed from service and due to the negligence on the part of the respondent there was loss of items in the corporation and that fact has not been considered by the labour court.

I have considered the submissions made by Mr. Desai and his endeavour before this Court to establish that in such cases, when the negligence of the workman has resulted into loss to the property of the corporation, the labour court ought not to have passed the impugned award by holding that the charges levelled against the respondent have not been proved. He has submitted that the labour court has erred in not imposing any penalty to the respondent workman.

I have gone through the entire award passed by the labour court which is running from page 21 to 68 of the petition. The labour court has given well reasoned and detailed award and has taken great pain for considering each and every aspect of the matter . The labour court has discussed every evidence of the petitioner corporation against the respondent workman and after such detailed scrutiny and examination of the evidence brought before it, the labour court has come to the conclusion that none of the charges levelled against the respondent workman were found to be proved. Learned advocate Mr.Desai has read the whole award before this court and has emphasized relevant paragraph and discussion made in the award. As regards the charge of not signing the stores book from the year 1969 and explaining and replying in indisciplined and irresponsible manner, it was the contention of the workman that for not putting his signatures in the books from August, 1969, there was no mala fide intention on his part nor was it his carelessness or negligence but was his bona fide intention and with an intention that the accounts are properly maintained, he had instructed his clerk Shri Soni to maintain separate books of account and with this bona fide intention, he had not put his signatures in the books from August, 1969. The labour court has observed that there is a base and truth in the defence of the workman. For not putting signatures in the books, the respondent had submitted an explanation dated 4th December, 1969 in which he has clearly stated as to under what circumstances, he has stopped to put his

signature and in the said letter, the respondent has mentioned that now, he will put his signature which are pending after verification of the books and accordingly, the respondent had started to put his signatures in the month of December,1969 and this chapter was, thereafter, closed by the Commissioner after issuing warning to the respondent by his letter which is at Exh. 15/1. The labour court has, therefore, considered this chapter to have been closed by the commissioner by issuing warning to the respondent. In paragraph 12 of the award, the labour court has further found that there is not an iota of evidence that the respondent has misappropriated any material of the stores. The labour court has also found that there was no intention on the part of the respondent to get any financial or monatory advantage by not putting his signature. The labour court has observed that on the contrary, the mal practice and misappropriations of the material has been found by the respondent which has been committed by the other employees of the corporation and for that, the respondent workman was victimized and has been made a scape goat and his superior Mr. Makati was initially suspended and subsequently dismissed by the Corporation. It was also observed by the labour court that there was no iota of evidence with respect to dishonesty against the respondent for not putting his signature in the books and the explanation submitted by the respondent was found to be reasonable and natural. After considering the said evidence, the labour court has,in terms,came to the conclusion that there is no slightest truth in the charges levelled against the respondent workman. Ultimately, after appreciating the evidence on record, the labour court has concluded that there was no evidence against the respondent workman which would prove the negligence and misconduct as alleged. As regards third charge that the respondent had proceeded on leave from 24.2.1970 to 28.2.1970 by getting sanctioned the casual leave. In connection with the said allegation and with reference to the said allegation, it has been alleged that the workman had not obtained permission for leaving the head quarters. After discussing the entire evidence on record, the labour court has come to the conclusion that it could be understood that after getting sanctioned the casual leave and by cancelling it for demanding privileged leave for further more days, there is no misconduct and the respondent had got sanctioned in advance the casual leave and in view of the circumstances, he had written post card from Jamnagar requesting to cancel the casual leave and to grant him privileged leave. After reporting the duty, the petitioner can scrutinize and sanction the request for leave and, therefore, the labour court has

come to the conclusion that even the third charge has also not been found to have been proved against the respondent workman. As regards fourth charge, the labour court has come to the conclusion that there is no allegation against the respondent workman that he had removed the spare parts with mala fide intention or he has made use for his own purposes. It was observed by the labour court that, on the contrary, unused spare parts which were lying at one spot of the corporation were used by the workman and by using it, the pump set which became out of order was repaired immediately by the respondent.

Thus, in view of the aforesaid findings of the labour court on the four charges levelled against the respondent workman, the labour court was of the view that the respondent was required to be reinstated in service and the impugned order of dismissal was required to be quashed and set aside. As regards back wages, since the petitioner corporation has not led any evidence to the effect that during the intervening period, the respondent workman was gainfully employed elsewhere, the labour court directed his reinstatement in service with full back wages from the date of his dismissal till the date of his actual reinstatement.

After considering the entire award passed by the labour Court and also after taking into consideration the submissions made before this Court by the learned advocate Mr. Desai, that the findings recorded by the labour court are perverse and baseless and that the labour court has committed gross error in reappreciating the evidence which was led in the departmental inquiry, I am of the opinion that there is no substance in these submissions. The labour court has given detailed reasons and has taken great pain in discussing each and every aspect of the matter and has also considered each and every aspect of the evidence produced before it and has, after appreciation of such evidence, come to the right conclusion. Mr. Desai has not been able to point out as to how and why the labour court has no jurisdiction to reappreciate the evidence which was led in the departmental inquiry. In that regard, decision of the apex court in case of Workmen of M/s. Firestone Tyre and Rubber Co. of India Pvt. Ltd. v/s. Management and Ors. reported in AIR 1973 SC 1227 is relevant. In the said decision, the apex court has decided the question as to whether the labour court can reappreciate the evidence led during the course of departmental inquiry ornot and after the appreciation of such evidence, whether the labour court can give its own conclusion ornot which is

different from the conclusion of the Management or not. The apex Court has considered the very same question and has held as under in paragraph 36,37 and 38:

"36. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under section 11A, about the guilt or otherwise of the workman concerned, is that of the tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by en employer and a finding of misconduct arrived at, the tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

37. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under section 11A by the tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that that it does not warrant dismissal or discharge. The tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the tribunal will have to reappraise the evidence for itself. Ultimately,it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why according to u/s. 11A now gives full power to the tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognized in a tribunal when it was deciding a dispute on the basis of evidence

adduced before it for the first time. Both categories are now put on a par by section 11A.

38. Another change that has been effected by section 11A is the power conferred on a tribunal to alter the punishment imposed by an employer. If the tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management.Once the misconduct is proved, the tribunal had to sustain the order of punishment unless it was harsh indicating victimization. Under S. 11A, though the tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the tribunal by S.11A. "

In view of the principles laid down by the apex court in the aforesaid decision, the labour court and/or the tribunal can reappreciate the evidence led during the course of departmental inquiry and can now differ from the findings given given by the management in the departmental proceedings. Thus, the labour court and the tribunals are vested with the jurisdiction to reappreciate the evidence led during the course of departmental inquiry and can come to its own conclusion, when it has to adjudicate uponthe dispute referred to it in which the employer relies on the findings recorded by him in the domestic inquiry. Thus, the contention which has been raised by Mr.Desai has been clearly answered by the aforesaid decision of the apex court. It is more so in view of the directions given by the Division Bench of this Court in the petition filed by the petitioner corporation as stated earlier that the labour court retain the said evidence on record and shall look into it as if it was led before it. Thus, in view of the decision of the apex court as stated above and also in

view of the directions of this court as stated above, the labour court is quite justified in reappreciating the evidence led during the course of departmental and is also justified in coming to the different conclusion than the conclusion arrived at in the departmental proceedings. I am of the opinion that the labour court has not committed any error which is apparent on the face of the record.

As regards the submission of Mr. Desai that the findings recorded by the labour court are baseless and perverse and the labour court has not imposed any penalty to the respondent while appreciating the evidence on record, it is pertinent to note that the law has now changed in respect of the powers of the labour court under section 11A of the ID Act when the departmental inquiry is vitiated.

The apex court has, in its decision in the matter of Neeta Kaplish versus Presiding Officer, Labour Court and another reported in 1999 Lab. I.C. pg. 445, considered the power of the labour court to permit adducing of 'fresh evidence' and has also considered the scope and ambit of sec.11-A of the ID Act. It has been held by the apex court in the matter of Neeta Kaplish (supra) that the provisions of section 11-A of the ID Act were introduced in the Act by the Parliament wherein it was provided that thetribunalhad not only thepower to set aside the order of dismissal and direct reinstatement of the workman, ithad also the power to award lesser punishment. The observations made by the apex court in the said decision, in paragraph13 to 16 read as under:

"13. Statement of Objects and Reasons appended to the amending Act 45 of 1971 reads as under:

'(a) In Indian Iron and Steel Co. Limited v. Their Workmen, (1958) I LLJ 260, the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, dischrge or terminate the services of a workman,has observed thatin cases of dismissal for misconduct, the tribunal does not act as a Curt of appeal and substitute its own judgment for that of themanagement and that the tribunal will interfere when there is want of good faith, victimization, unfair labour practice etc. on the part of the

management.

2. The International Labour Organization, in its recommendation (No.119) concerning "Termination of employment at the initiative of the employer adopted in June 1963, has recommended that a worker aggrieved by the termination ofhis employment should be entitled to appeal against the termination among others, to a neutral body such as subordinate, a Court, an arbitration committee or a similar body and that the neutral body concerned should be employed to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The Internatioal Labour Organization has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the tribunal should have the power,in cases whereever necessary set aside the order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of anylesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new S. 11-A is proposed to be inserted in the Industrial Disputes Act, 1947.'

14. Provisions of the Industrial Disputes Act, were, thus, amended on the recommendation of the International Labour Organization and section

11-A was introduced in the Act by the Parliament, wherein it was provided that the Tribunal had not only the power to set aside the order of dismissal and direct reinstatement of the workman, it had also the power to award lesser punishment. The proviso to sec. 11-A however provided that the Tribunal would rely only on the material already on record and shall not take any fresh evidence.

15. The provisions of section 11-A specially the prohibition contained in the Proviso that the Labour Court would not take any fresh evidence, came to be considered by this Court in several cases which we shall shortly notice but even before the introduction of section 11-A, this Court in Ritz Theatre (Pvt) Ltd., Delhi v. Its Workmen (1962) 2 Lab LJ 498 : AIR 1963 SC 295 : (1963) 3 SCR 461,laid down that where the Management relied upon the domestic enquiry in defending its action, it would be the duty of the tribunal to first consider the validity of the domestic enquiry and only when it came to the conclusion that the enquiry was improper or invalid, it would itself go into the merits of the case and call upon the parties to lead evidence.

16. Even after the introduction of Section 11-A, the legal position as to the jurisdiction of the Labour Court or Tribunal to itself decide the merits of charges on fresh evidence remained unaltered. "

In para 26 of the said decision, it has been held as under:

"26. The record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record" as contended by the counsel for the respondent, within the meaning of section 11-A at the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that

the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record" within the meaning of section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences. "

Thus, after the departmental inquiry is vitiated and declared invalid by the labour court, same inquiry papers or the evidence led in the departmental inquiry cannot be relied upon or to be considered by the labour court for proving the charge against the workman and for that, the employer has to prove the charge by leading fresh evidence before the labour court. In the instant case, though there is clear directions issued by the division bench of this court to consider the papers of departmental inquiry which has been vitiated by the labour court, same has been relied upon by the labour court and has also been considered by the labour court. However, it should be noted that after the decision of the division bench of this Court, the petitioner corporation has not led any fresh evidence before the labour court for proving the charges levelled against the respondent workman. Therefore, I am unable to accept the submission of Mr.Desai that the findings recorded by the labour court are baseless and perverse. The present petition has been filed by the petitioner corporation under Article 226/227 of the Constitution of India challenging the very award passed by the labour court. The apex court has, in the decision reported in case of Ahmedabad Muni. Corporation v/s. Virendrakumar J. Patel, reported in 1998 (1) GLR pg. 17, held as under:

"It is true that the High Court, while exercising its jurisdiction under Article 226 of the Constitution, cannot convert itself into a court of appeal and access the sufficiency or adequacy of the evidence in support of the finding of the

> fact reached by the competent courts or the tribunals, but this, however, does not debar the High Court from its power to enquire whether there is any evidence in suport of a finding recorded by the inferior court or tribunal.It is well established that there is a difference between a finding based on sufficiency or adequacy of evidence and a finding based on no evidence. If the finding of fact recorded by the tribunal is based on no evidence, such a finding would suffer from error of law apparent on the face of the record."

Therefore, as per the aforesaid decision of the apex court, this Court, while exercising the powers under Article 226/227 of the Constitution of India, cannot convert itself into a Court of appeal and assess the sufficiency or the adequacy of the evidence in support of the finding of fact reached by the competent courts or the tribunals. However, this Court is not debarred from its power to inquire whether there is evidence in support of the finding recorded by the courts below or the tribunals. It is well established that there is difference between the findings based on sufficient or adequate evidence and the findings based on no evidence. If the findings are based on no evidence, such finding would suffer from the error of law apparent on the face of the record.

Learned advocate Mr. Desai appearing for the petitioner corporation has not been able to point out that the findings of the labour court are based on no evidence. On the contrary, the submission is in respect of sufficiency or adequacy of the evidence led before the labour court. The findings of the labour court are based on fact and the evidence led during the course of departmental inquiry and it is not the case that they are based on no evidence. This Court cannot reapreciate the same or interfere with the same. Therefore, considering the said decision, I am of the opinion that this court cannot interfere with the findings of fact recorded by the labour court. The apex court has,in case of Ms.Rena Drego vs. Lal Chand Soni, reported in AIR 1998 SC Weekly pg. 1840, held that it would have been well for the high court to remand itself that it was not exercising the certiorari jurisdiction under Article 226 of the Constitution but the supervisory jurisdiction under Article 227 of the Constitution of India which obliges the High Court to confine to the scrutiny of the records and proceedings of the lower tribunal or the court. By

relying on the fresh material which werenot before the tribunal, the High Court should not have disturbed the findings of fact in exercise of such supervisory jurisdiction. It is now well nigh settled that the power under Article 227 of the Constitution is one of the superintendence which cannot be exercised to upset the conclusions of facts, howsoever erroneous those may be unless such conclusions are so perverse or so unreasonable that no court could ever have reached them.

Way back in 1954, division bench of this court, in the decision reported in AIR 1954 SC 215, has pointed out that the powers of superintendence conferred by Article 227 of the Constitution should be exercised most sparingly and only in an appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

Recently, the division bench of this court has considered the very issue in case of Chhagn Ranchhod Kukavava versus General Manager, WR, Bombay and Anr. reported in 1998 (1) GLH 461 and has made the following observations :

> "Administrative Tribunals Act,1985-S.21 Constitution of India - Arts. 226/227 - Order of the Tribunal can only be challenged if there is any jurisdictional error - Under Article 227, High Court will not review or reweigh evidence."

In view of the above, according to my opinion, the findings recorded by the labour court cannot be said to be baseless or perverse. On the contrary, same are quite legal, valid and reasonable and the labour court has rightly appreciated the evidence led in departmental inquiry for considering the fact as to whether on the basis of the said evidence, misconduct or the charges levelled against the respondent workman are found to be proved ornot. After consideration of the said evidence on record, the labour court has rightly come to the conclusion that the charges levelled against the respondent workman are not found to be proved and in doing so, the labour court is justified and it has power under section 11A of the ID Act to reapreciate the evidence and come to its own conclusion and it can differ from the conclusion/s drawn by the management. Thus, according to my opinion, the impugned award which is a well reasoned award does not require any interference of this court in exercise of the powers under Article 227 of the Constitution of India and, therefore, this petition

is required to be dismissed as the same is having no merits either in law or on facts.

In view of the above discussion, this petition is dismissed. Rule is discharged. Ad interim relief granted earlier shall stand vacated with no order as to costs.

According to Mr.Desai, the respondent workman has expired. By way of interim order, this court has directed the petitioner corporation to deposit 50% of the back wages before this court and out of 50% of the back wages so deposited, an amountof Rs. 50000/- has been directed to be invested by the Registry of this Court in any Nationalized Bank and the remaining amountof 50% back wages so deposited by the petitioner before this Court was directed to be paid to the respondent workman without insisting for any security and the question of interim relief was yet kept open for being decided at the time of final hearing of this petition. Thus, in the instant case, the petitioner corporation has deposited 50 %of the back wages before this Court as per the interim orders passed by this Court and outof the said amount of 50% of the back wages, an amount of Rs. 50000/- was directed to be invested in long term fixed deposit in any Nationalized bank and the remaining amount of the said 50% of the back wages was ordered to be paid to the respondent. This petition was filed in the year 1987 and the interim orders were passed by this Court on30.3.1988 and 25.7.1989. Now, since this Court is dismissing the petition of the petitioner corporation by confirming the award passed by the labour court, the workman is required to be paid the full back wages. Therefore, the petitioner corporation is now required to make payment of the remaining amount of back wages to the workman to the heirs and legal representatives of the deceased representatives who has expired during the pendency of the present petition. On the facts and in the circumstances of the case, since the petitioner corporation has utilized the remaining amount of back wages for its own purposes for a period of more than thirteen , I am of the opinion that the petitioner should be directed to pay the remaining amount of back wages with some interest. I am of theopinion that it would be just and proper if the petitioner is directed to pay the remaining amount of back wages with 12% interest per annum from the date of this petition till realization thereof in full because the value of money has been deteriorated too much in view of inflation and rise in each and every item and articles.

I am fortified in awarding the interest to the respondent for the unpaid back wages in view of the pronouncement of the Supreme Court in case of Gammon India Ltd. v. Noranjan Dass reported [1984-I-LLJ-233]. In case of Gammon India Ltd., the apex Court has laid down the following principles (at pg. 236):

"4. In the course of hearing of this appeal, it was stated that the respondent has reached the age of superannuation and, therefore,physical reinstatement in service is not possible. Appellant will have to establish that fact but in the event, the appellant shows that under a valid rule,the respondent has reached the stage of superannuation and, therefore, physical reinstatement is not possible, it is hereby declared that the respondent shall continue tobe in service uninterruptedly from the date of the attempted termination of service of service till the date of superannuation. Respondent would be entitled to all back wages including the benefits of revised wages or salary if during the period there is revision of pay scales with yearly increment, revised dearness allowance or variable dearness allowance and all terminal benefits if he has reached the age of superannuation such as Provident Fund, Gratuity etc. Back wages should be calculated as if the respondent continued in service uninterrupted. He is also entitled to leave encashment and bonus if other workmen in the same category were paid the same. It appears that the respondent has been unlawfully kept outof service, therefore, it is but just that the appellant company shall pay all the arrears as calculated according to the directions herein given with 12% interest from the date the amount became due and payable till realization. Appellant shall also pay costs to the respondent quantified at Rs. 5000/-. The appellant is directed to pay the amount as herein directed tobe paid within 3 months from today."

In case of Saijpur Bogha Nagar Palika Octroi Karmachari Mandal & Anr. versus Ahmedabad Municipal Corporation,reported in 1991 (2) GLR pg. 956, the Division Bench of this Court has considered the question of payment of interest on the amount of salary. In paragraph44 of the judgment, this Court has held as under:

"In the contract of employment, regular payment of wages is always an express term of contract. By necessary implication, the term with regard to payment of interest on the delayed payment of wages has to be read in all such contracts of employment."

According to my view, if the petitioner would have paid the whole amount of back wages to the respondent during the pendency of this petition or if the petitioner would have deposited the same in any nationalized bank or in any Government Security like Kisan VIkas Patras or National Saving Certificate, same would have been multiplied twice or thrice by now. Therefore, in view of this situation, since the petitioner corporation has kept the remaining amount of back wages with it and has utilized the same for its own purposes, it is necessary that the petitioner is directed to pay the same to the heirs of the deceased respondent with interest as aforesaid since he expired during the pendency of the petition, waiting for disposal of the petition. Of course, it cannot be said that the petition has remained pending for all these years on account of any fault on the part of the petitioner but at the same time, it has to be appreciated that during the pendency of this petition, the petitioner has utilized the said amount and, therefore, by way of compensation, the respondent is entitled for compensation and, therefore, the petitioner is required to be directed to pay the remaining amount of back wages with 12% interest from the date of the petition till the realization thereof in full by the heirs and legal representatives of the deceased respondent workman, as certified by Mr. NK Majmudar, learned advocate appearing for the respondent workman.

In view of the above, Registry of this Court is directed to pay the amount of Rs.50000/- Rs.fifty thousand only which was ordered to be invested in any Nationalized bank as per the interim order dated 25.7.1989 passed by this Court to the heirs and legal representatives of the deceased respondent, as certified by Mr. NK Majmudar, learned advocate appearing for the respondent workman, with interest accrued thereon from time to time. The petitioner corporation is also directed to pay to the heirs and legal representatives of the respondent workman the amountof remaining back wages with interest thereon at the rate of 12% p.a. from the date of the petition till realization thereof in full.

While calculating the remaining amount of back wages, the petitioner corporation shall also take into consideration the fact that the respondent was ordered to be reinstated in service with all consequential benefits, as if he has remained in continuous service and was entitled to it and accordingly, the petitioner corporation shall also revise the pay scale of the respondent workman by giving retrospective effect to his reinstatement and shall also revise the retirement benefits and shall pay difference of such benefits to the heirs and LRs. of the deceased respondent workman. Now, after carrying out such exercise and after determining the total figure of back wages for the intervening period, the petitioner corporation shall first deduct the amount of Rs. 1,00,000/- which was deposited by it before the Registry of this Court as per the interim orders and after deducting he said amount, it shall calculate interest on the remaining amountof back wages at the rate of 12 per cent per annum from 26th November, 1987 which is the date of the petition till the date of actual payment and shall accordingly pay the said amount to the heirs and LRs of the deceased respondent workman. The petitioner corporation shall pay the remaining amount of back wages as directed above to the heirs and LRs of the deceased respondent as expeditiously as possible, preferably within three months from the date of receiptof certified copy of this order. Registry is directed to send writ of this order forthwith.

27.3.2000. (H.K.Rathod,J.)

Vyas